UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,046	03/24/2005	Rolf Kordon	2002P01314WOUS	1779

46726 7590 05/14/2008

BSH HOME APPLIANCES CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
100 BOSCH BOULEVARD
NEW BERN, NC 28562

EXAMINER	
CORRIGAN, JOSEPH JAMES	
ART UNIT	PAPER NUMBER
3744	
MAIL DATE	DELIVERY MODE
05/14/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/529,046	KORDON ET AL.	
	Examiner	Art Unit	
	JOSEPH CORRIGAN	3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 January 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *15-28* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *15-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *28 January 2008* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

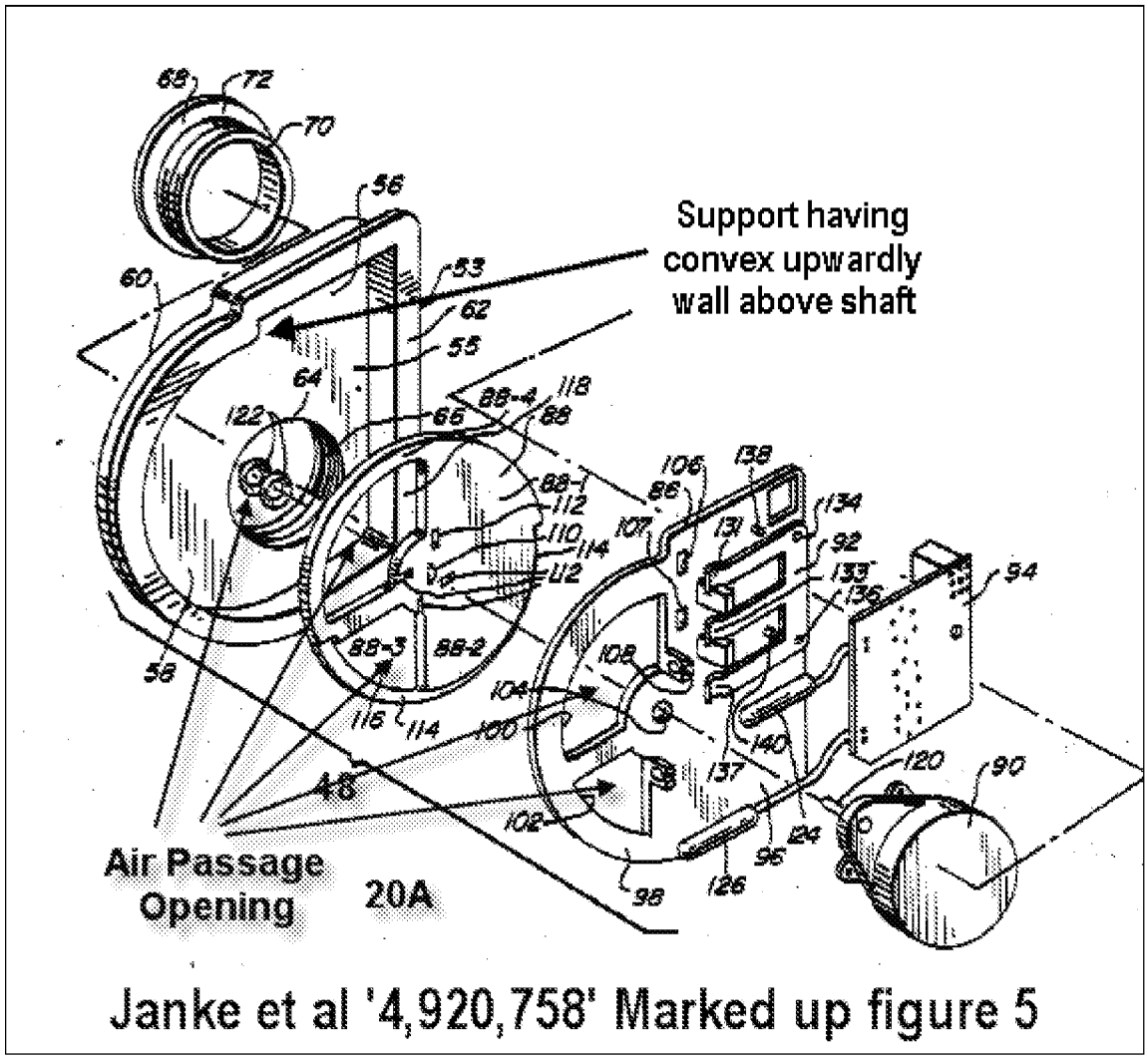
2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 15-19 and 25-28 are rejected under 35 U.S.C. 102(b) as anticipated by Janke '4,920,758 or, in the alternative, under 35 U.S.C. 103(a) as obvious over Janke et al '4,920,758' in view of Oike '4,852,361"

In re claim 15, Janke et al '758 discloses a storage chamber (22, figure 1); an evaporation chamber (20, figure 1); an air passageway (47, figure 4) having a plane and enabling air exchange between said storage chamber (22, figure 1) and said evaporation chamber (20, figure 1); said air passageway (47) having an air passage opening (47) having a cross-section; a control body (88, figure 5) arranged on said air passage opening (47); said control body (88, figure 5) shiftable between positions (column 6, lines 46-50) in which said control body (88, figure 5) variously covers said cross-section of said air passage opening (47); and said control body (88, figure 5)

rotatable about an axis (see marked up figure 5, ghost line traveling through center of motor shaft) substantially perpendicular to said air passageway (47) plane. Please note that the freezer compartment is being identified as evaporation chamber since air sent through evaporator passes through fan aperture (28) and is stored in this compartment.



As an alternative to rejection statement above using Janke ‘758 (see figure 1) representation of an “evaporation chamber” (20), Oike ‘361 discloses in figure 2 airflow regulator (29, figure 2) operating between a storage chamber (9, figure 2) and an evaporation chamber (7, figure 2).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Janke et al '758 by placing evaporation chamber air-flow regulator directly in contact with evaporation chamber as taught by Oike in order to advantageously cool the space more rapidly, and thereby, reducing wear and tear on regulator assembly ultimately resulting in lessening chances of future repair cost.

In re claim 16, Janke et al '758 discloses invention above and further discloses a partition (18, figure 1) formed between said storage chamber (22, figure 1) and said evaporation chamber (20, figure 1) and said air passageway (47, figure 4) is formed through said partition (18).

In re claim 17, Janke et al '758 discloses invention above and further discloses said control body (88, figure 5) is formed as a substantially circular disc.

In re claim 18, Janke et al '758 discloses invention above and further discloses said circular disc (88, figure 5) has a peripheral surface (144) formed as a cam disk.

In re claim 19, Janke et al '758 discloses invention above and further discloses a drive motor (90, figure 5) for driving said control body (88, figure 5) to shift positions and including a switch (128, 130, figure 3) attached to said partition interacts with said cam disk for controlling said control body (88) drive motor (90, figure 5).

In re claim 25, Janke et al. disclose a wall (18, figure 5) between the storage chamber (22, figure 4) and the evaporation chamber (20, figure 4) and a substantially cylindrical shell element (68, figure 5) formed with said wall (18) and said air passage opening (47, figure 4) formed in said cylindrical shell element (68).

In re claim 26, Janke et al '758 disclose, as described in greater detail above with regards to claim 25, an air passage (47, figure 4) between the storage chamber (22) and the evaporator chamber (20) with a dividing wall (18) therebetween having a cylindrical shell element (68), but does not disclose a heating element attached directly or indirectly to either the periphery of the cylindrical shell element (68) or the associated air passage opening.

Oike teaches a heater element (35, figure 3) attached to a periphery of a cylindrical supply duct or air passage opening formed between the storage chamber (9, figure 2, Oike) and the evaporator chamber (7, figure 2, Oike)

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Janke et al '758 by attaching heating element to a periphery of cylindrical shell element, as taught by Oike, in order to prevent ice build-up that will interfere with the operation of the control body resulting in the storage area temperature be unregulated, avoiding the spoilage of its contents, and thereby, saving the expense of replacement.

In re claim 27, Janke et al '758 discloses invention above and further discloses a drive motor (90, figure 5) mounted for rotating said control body (88, fig. 5) on said cylindrical shell element (68).

In re claim 28, Janke et al '758 discloses invention above and further discloses a support (53, figure 5) formed on said air passage opening (47) facing said control body (88, figure 5).

4. Claims 20-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Janke et al '4,920,758 in view of Noritake et al '5,876,014'.

In re claim 20, Janke et al '758 discloses invention above and further discloses said control body axis (figure 5, dashed line) is formed by a shaft (120, figure 5) of a drive motor (90, figure 5) for driving said control body (48, figure 5) to shift positions (see column 4, lines 12-25 regarding selectively positionable baffle); they, however, fail to explicitly recite said shaft extending through a sleeve formed in said control body.

Noritake et al. teach said shaft (#13, Noritake et al shaft) extending through a sleeve (4a & 4b, figure 4A) formed in said control body.

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Janke et al '758 with a sleeve in a control body in order to gain a stable member for the shaft to mate with the control body, and thereby, adding value to the product's selling price.

In re claim 21, Janke et al '758 discloses invention above and further discloses a support (53, figure 5) formed on said air passage opening (47, figure 4), said support having convex upwardly walls (see marked up figure 5 above) above said shaft (120). Please note that inside wall of insert threaded sleeve is considered "convex upwardly walls" as required in claim limitation. (See column 4, lines 65-68 through column 5, lines 1-3)

5. In re claim 22, Janke et al '758 discloses invention above, however, fails to disclose said shaft and said sleeve each have a slot formed therein in a plane oriented

diagonally to said axis and a locking element is engaged in said slots to lock said shaft and said control body together.

Noritake et al. teach said shaft and said sleeve (4a & 4b, figure 4A) each have a slot (13a, 13b, figure 5A & 4f, 4g, figure 4A, respectively) formed therein in a plane oriented diagonally to said axis and a locking element (16, figure 1) is engaged in said slots to lock said shaft and said control body together.

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Janke et al '758 by incorporating slots and a locking elements in order to advantageously provide an easily detachable securing means lending itself well to quick repairs, and thereby, lowering repair costs.

In re claim 23, Janke et al '758 discloses invention above, however, fails to disclose said locking element having a first end fixedly secured in said control body and said locking element having an elastically mobile second end, said elastically mobile second end can be displaced to displace said locking element from at least one of said slots.

Noritake et al. teach said locking element (16) having a first end (end disposed within shaft and sleeve holes, figure 1) fixedly secured in said control body and said locking element (16) having an elastically mobile second end (end extending out beyond shaft and sleeve holes, figure 1), said elastically mobile second end can be displaced to displace said locking element (16) from at least one of said slots (slot #4f and 4g in figure 4A). (Please note elasticity mobile second end of locking element is described in C4, L5-8 regarding extra space "g" working similar to a standard cotter pin.

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Janke et al '758 with a locking element with a fixedly secured end and an elastically mobile end as taught by Noritake et al. in order to advantageously provide an exemplary securing means with the added benefit of being easily removable for quick maintenance and replacement, and thereby, reducing labor costs.

In re claim 24, Janke et al '758 and Noritake et al disclose invention above and further disclose said locking element (16, Noritake et al) enclosed between said control body (88, Janke t al) and a wall (53, 86, Janke et al) between the storage chamber and the evaporator chamber (see top view of air valve, figure 4, Janke et al), said control body swivel-mounted (see figure 5) on said wall and a free end of said locking element (second end, Noritake et al) can be activated through a hole (112, figure 5) formed in said control body (88, Janke et al).

Response to Arguments

6. Applicant's arguments filed 1/28/08 have been fully considered but they are not persuasive.

--- Re applicant's argument of claim 15 on page 13, lines 9-12 of remarks states that the Janke reference does not disclose at least "an evaporator chamber and an air passageway having a plane and enabling air exchange between said storage chamber and said evaporator chamber". The examiner notes that a reasonable interpretation of the term "evaporation chamber" would include any space where evaporation occurs or

can occur, such as a space immediately adjoining a space in which an evaporator is disposed, in which space air discharged from the evaporator remains virtually unchanged in temperature and humidity from when the air left the evaporator. Thus, as broadly recited, the Janke et al reference clearly teaches an "evaporation chamber" and the rejection is proper and remains.

---Re applicant's argument on page 14, lines 5-8 of remarks it is stated that Janke reference does not disclose that the Oike reference, or its combination with Janke et al., lacks a control body between a strorage chamber and an evaporator chamber. It should be noted however, that Oike is used to teach the option of the placement of Janke, et al. cold air throttling device in fluid contact with the space wherein evaporator is disposed executing the same function and further reinforcing the air valve's multi-facetted use in a partitioned refrigeration space. The applicant is reminded that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. (MPEP 7.37.09)

-- Re lack of motivation to combine Janke et al with Oike references, page 13, lines 24-27, examiner respectfully disagrees. In response to applicant's argument, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

--- Applicant's arguments, see Remarks, filed 1/28/08, with respect to the rejection(s) of claim(s) 22-24 under USC 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Noritake et al.

Remarks

This action is being made non-final to afford the applicants the opportunity to respond to the new grounds of rejection.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph J. Corrigan whose telephone number is 571-270-3213. The examiner can normally be reached on 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisors are Cheryl Tyler or Frantz Jules on (571) 272-4834 or (571) 272-6681, respectively. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Joseph J Corrigan
Examiner
Art Unit 3744
5/12/08

/Cheryl J. Tyler/
Supervisory Patent Examiner, Art Unit 3744